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October 10, 2013

Hon. Catherine O'Hagan Wolfe
Clerk of the Court
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

RE: *New York Times Co. v. United States*, Nos. 13-422 (Lead),
13-445 (Con.) (2d Cir.)

Dear Ms. Wolfe:

In response to a request by this Court, we submit this letter to memorialize for the Court and opposing counsel certain developments in the above-captioned case.

Oral argument in this case was held on October 1, 2013. Following the public oral argument in the case, the Court held a brief, *ex parte* session with counsel for the government appellees to clarify the content of the classified record on appeal. At the Court's request, and in order to ensure that the classified record before the Court is a complete set of material that was filed in district court, the government is filing today, *in camera* and *ex parte*, bound copies of the Classified District Court Materials, containing a complete set of classified declarations with supporting exhibits filed in district court and a copy of the classified appendix to the district court decision.

In addition, we are filing today by CM/ECF a public supplemental letter brief in accordance with the Court's order at oral argument. The government is also moving for leave to file *in camera* and *ex parte* a supplemental classified submission that responds briefly to two questions posed at oral argument that could not be answered fully in a public argument session. Copies of the proposed supplemental classified submission have been lodged with the court security officers.

Finally, the Court inquired generally about the submission to the Court of withheld documents for the Court's *ex parte*, *in camera* review. The Court previously ordered the government to submit three specific documents for *in camera* review, which were provided to the Court. We note that, with regard to the New York Times FOIA requests, whether or not there are any OLC opinions or memoranda pertaining to an agency other than DOD containing legal advice on the use of targeted lethal force is itself classified information. In addition, information about the number and nature of classified documents in DOJ's possession that are responsive to the ACLU's request, and information about the number and nature of any documents in CIA's possession that are responsive to the ACLU's request, is also classified. Accordingly, in order to protect against the inadvertent disclosure of classified information, we request that any order to the government to produce documents for *in camera* review that references the existence of, or describes, any responsive documents, be issued *ex parte*. Should the panel wish to review *in camera* any additional documents that were not reviewed by the district court and are not part of the record on appeal, the government requests that it be given the opportunity for further briefing on the question of *in camera* review.

Thank you for your attention to this matter, and please do not hesitate to contact us with any questions or if we can be of further assistance.

Sincerely,

/s/ Sharon Swingle

Sharon Swingle

cc: Plaintiffs-appellants (via CM/ECF)